



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 18-4, 17-105; FCC 18-8]

Filing of Contracts; Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on whether and how to modernize the Commission's rules, which requires each licensee or permittee of a commercial and noncommercial AM, FM, television, or international broadcast station to file certain contracts and other documents with the Commission within 30 days after execution. This document continues the Commission's efforts to modernize its regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested parties may submit comments and replies, identified by MB Docket Nos. 18-4, 17-105, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Website: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Christopher Clark of the Industry Analysis Division, Media Bureau, at (202) 418-2609.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 18-8, adopted and released on January 30, 2018. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at https://apps.fcc.gov/edocs_public/attachmatch/FCC-18-8A1.pdf. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to

fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), 202 418-0432 (TTY).

SYNOPSIS

1. Background. Since the late 1930s, the Commission has required broadcast station licensees and permittees to file with the Commission copies of certain contracts and other documents relating to ownership and operation of stations. Historically, this filing requirement was intended to keep the Commission and the public informed with respect to the ownership and control of broadcast stations and to enable the Commission to be advised of compliance with its rules relating to those matters. In the past, the Commission has also used the information contained in some of these agreements to formulate certain broadcasting policies and rules or to enhance its understanding of the broadcast industry. At the time, requiring that broadcast licensees and permittees submit paper copies to the Commission was the most efficient mechanism available for the Commission to obtain copies of the documents and helped ensure that certain documents were also available for public inspection.

2. Beginning in 1965, broadcast licensees and permittees were also required to make copies of these documents available via a local public inspection file. This additional obligation provided another source for public inspection of documents relating to ownership and control of a broadcast station for those able to travel to a station's main studio during regular business hours. In 1998, the Commission amended its public file rules to give broadcast licensees and permittees the option of maintaining an up-to-date list of such documents in the public file and providing copies of the actual documents to requesting parties within seven days, in lieu of maintaining the documents themselves in the file. In 2012, the Commission amended its public file rules in general to require that public file materials be posted to an online database hosted by

the Commission rather than maintained in a paper file at the station. Under the 2012 amendment to the rules, licensees and permittees that choose to retain a list of Section 73.3613 (47 CFR 73.3613) documents in the public file must continue to provide a copy of any such documents to requesting parties within seven days. Television stations completed their transition to the online public file in 2014. The last group of remaining radio stations to transition must begin using the online file by March 2018. The transition to online public inspection files enables greater public access to the contents of the files, including documents filed pursuant to Section 73.3613—which are either placed directly in the public file or provided on demand based on an up-to-date list—particularly for those who are unable to travel to a station or the Commission during regular business hours.

3. The Commission has periodically re-evaluated the paper filing requirement in Section 73.3613 and revised the rule as necessary to eliminate unnecessary paperwork and reduce administrative burdens on licensees and the Commission. For example, prior to the late 1970s, the Commission revised Section 73.3613 on multiple occasions to eliminate the obligation to routinely submit paper copies of several documents and instead require that certain documents be kept at the station and made available upon request. Beginning in the late 1970s, the Commission took several steps to eliminate unnecessary paperwork burdens resulting from the requirement that stations submit paper copies of certain network affiliation contracts that the Commission no longer needed to collect routinely. For example, the Commission eliminated the requirement that radio stations file network affiliation and transcription contracts with the Commission, and it limited the mandatory filing of television network affiliation contracts to just those agreements with national networks. The Commission subsequently proposed to eliminate the routine filing requirement for national television network affiliates as well and instead

require that television licensees make their national network affiliation agreements available to the Commission upon request. This proposal remained pending until the Commission terminated the proceeding in 2011.

4. The types of documents that must be filed with the Commission under the current rule include network affiliation agreements between a television station and a national network; documents that relate to ownership or control of the licensee or permittee; contracts that relate to management of a station by someone other than a regular employee, officer, or director of the station, or by any person where the contract also provides for both a percentage of profits and sharing in losses; attributable time brokerage agreements; and attributable joint sales agreements. In addition, the current rule also requires that the following documents be kept at the station and made available for inspection upon request by the Commission: subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the television vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for four or more hours per day, except where the length of the events broadcast is not under control of the station; and contracts with chief operators.

5. In May 2017, the Commission issued a Media Modernization Initiative Public Notice launching a review of its media regulations to eliminate or modify those that are outdated, unnecessary, or unduly burdensome. In response to that Media Modernization Initiative Public Notice, several commenters in the Media Modernization proceeding urged the Commission to eliminate the existing paper filing requirements in Section 73.3613. These commenters generally assert that the Commission's and the public's information needs can be sufficiently met through the existing public file requirements. No commenters opposed these recommendations.

6. AM, FM, and Television Stations. We tentatively conclude that the Section 73.3613 paper filing requirement for licensees and permittees of commercial and noncommercial AM, FM, and television stations should be eliminated. While paper filings may have previously been the most efficient mechanism for ensuring that the Commission and the public had ready access to these materials, we believe that is no longer the case. The vast majority of Commission forms are now filed electronically, and the Commission has taken many recent steps to eliminate or streamline paper submissions and other document retention obligations. For example, the transition to online public files, which is largely complete and will be finalized in March 2018, has significantly reduced burdens on stations and provided both the Commission and the public with easy access to station information and documents retained in the public inspection file.

7. Indeed, the Section 73.3613 documents of commercial and noncommercial AM, FM, and television stations are already available via their public inspection files, and such access will continue even without the Section 73.3613 paper filing requirement. Licensees and permittees of these stations currently file ownership reports electronically on FCC Forms 323 and 323-E, and on these ownership reports licensees and permittees are required to list all documents required to be filed pursuant to Section 73.3613 for all of the stations covered by the report. Our public file rules, contained in Section 73.3526 (commercial broadcast stations) and Section 73.3527 (noncommercial broadcast stations) of our rules, require that the licensees and permittees of these stations make the documents listed in their ownership reports—i.e., their Section 73.3613 documents—available for public inspection via their public files. Specifically, the public file rules require these licensees and permittees, at their discretion, to either (i) retain in their public inspection files copies of the documents listed in their ownership reports or (ii) maintain an up-to-date list of such documents in their public inspection files and provide copies

to a requesting party within seven days. Our public file rules also require licensees and permittees to retain copies of time brokerage agreements and joint sales agreements involving a commercial AM, FM, or television station in the station's public file. In light of this existing requirement and after evaluating our own document needs, we believe that eliminating the paper filing requirement as discussed herein will not meaningfully impact the ability of the Commission and other interested parties to review Section 73.3613 documents, and will reduce burdens on licensees.

8. Accordingly, consistent with comments to the Media Modernization Initiative Public Notice, we tentatively conclude that relying on the existing public file rules—subject to the proposed modifications discussed herein—will provide the Commission and the public with sufficient access to Section 73.3613 documents for commercial and noncommercial AM, FM, and television stations. We seek comment on this tentative conclusion. Our existing public file rules provide these stations with flexibility to select the disclosure method that is less burdensome with respect to Section 73.3613 documents. We therefore propose to eliminate the Section 73.3613 requirement that licensees and permittees of commercial and noncommercial AM, FM, and television stations file paper copies of such documents with the Commission. Instead, we propose that stations make such documents available to the Commission and the public via the options set forth in the existing public file requirement. We seek comment on this proposal.

9. As discussed above, our existing public file rules currently give stations the option of either (i) retaining copies of the documents listed in their ownership reports in the public file or (ii) maintaining an up-to-date list of such documents in the public file and providing copies to a requesting party within seven days. In order to preserve the current level of

access to these documents, we propose to clarify that a station must ensure that its inventory of Section 73.3613 documents in its public file is up to date, regardless of whether the station chooses to retain copies or a list of documents in the public file, and provide copies of its Section 73.3613 documents to the Commission and the public within seven days upon request. We seek comment on this proposal.

10. For additional clarity, we also seek comment on whether to revise the relevant public file rules to refer specifically to Section 73.3613, instead of referencing the documents listed in ownership reports (which are the same as the Section 73.3613 documents). In the alternative, we seek comment on whether to eliminate Section 73.3613 of the rules entirely—subject to the discussion of international broadcast stations below—and instead list these same documents in Sections 73.3526 and 73.3527 of our rules. Which approach would most effectively keep licensees informed of their obligations? If we eliminate Section 73.3613, how should we address the documents currently specified in Section 73.3613(e), which need not be filed with the Commission but must be kept at the station and made available for inspection upon request by the Commission under the current rule? Similarly, how should we address Section 73.3613(a)(1), which currently includes a definition of “network” that is cross-referenced in the Telecommunications Act of 1996 and in the Commission’s Dual Network Rule? We seek comment on these issues.

11. Under Section 73.3613, documents are required to be filed within 30 days after execution. By contrast, the public file rules do not explicitly state how quickly licensees and permittees must add the documents listed in their most recent ownership report or update the list of such documents, though licensees and permittees are expected to update their files in a timely fashion and to maintain orderly files. Is the existing practice for public file updates sufficient or

should we adopt a specific timeframe for updating the Section 73.3613 documents in the station's public file? If so, how long (e.g., continue to require updates within 30 days after execution, consistent with the current practice under Section 73.3613)? In addition to the specific issues discussed in Section B of this NPRM, we invite comment on any other modifications or conforming changes to Section 73.3613, or any other Commission rule, that are necessary or appropriate to implement the proposals discussed in this NPRM and on any alternative proposals for making these documents available in a less costly and more effective manner.

12. International Broadcast Stations. Unlike AM, FM, and television stations, international broadcast stations do not serve local communities in the United States. These stations, which are authorized on a seasonal basis, employ frequencies allocated to the broadcasting service between 5900 and 26100 kHz, the transmissions of which are intended to be received in foreign countries. Currently, two seasons exist: a summer season and a winter season. International broadcast stations, which are often operated by churches and other religious organizations, typically do not have network affiliations and do not enter into time brokerage arrangements or joint sales agreements. As of December 13, 2017, there were 16 international broadcast stations operating. These stations are subject to the Section 73.3613 filing requirements but do not have public file obligations like those applicable to AM, FM, and television stations. Similarly, these stations are not currently subject to the routine ownership reporting obligations applicable to other broadcast services.

13. Based upon our review, we tentatively conclude that the current justifications for requiring disclosure of Section 73.3613 documents by commercial and noncommercial AM, FM, and television stations do not apply to international broadcast stations. As mentioned above, for

example, licensees and permittees of commercial and noncommercial AM, FM, and television stations are required to list Section 73.3613 documents in the broadcast ownership reports they file with the Commission and make copies of such documents available via a public inspection file, but international broadcast stations are not subject to such obligations. Previously, international broadcast stations were subject to the ownership reporting requirements that applied to AM, FM, and television stations, but this is no longer the case. While the disclosure of Section 73.3613 documents by commercial and noncommercial AM, FM, and television stations supplements the ownership information that they must routinely report to the Commission, the same is not true for international broadcast stations. Furthermore, these stations are not subject to the ownership rules applicable to commercial AM, FM, and television stations, nor are they subject to the relevant operational provisions applicable to noncommercial stations. Moreover, it does not appear that the Section 73.3613 documents that international broadcast stations are required to file with the Commission have been reviewed by Commission staff in the recent past. Accordingly, we tentatively conclude that there is no need to continue requiring the licensees and permittees of international broadcast stations to routinely file Section 73.3613 documents with the Commission.

14. Instead, we believe that the Commission's information needs can be met by retaining our ability to obtain these documents from licensees and permittees of international broadcast stations upon request, as needed. For example, if there are concerns about the ownership or control of an international broadcast station, the Commission could request copies of the relevant Section 73.3613 documents as part of an investigation. For purposes of enforcing the statutory bar against de facto transfers of control of an international broadcast station without prior Commission authorization, we believe that it is sufficient to retain our ability to obtain

Section 73.3613 documents from licensees and permittees of international broadcast stations upon request. We seek comment on how to implement this requirement. Should the Commission's rules continue to delineate the documents subject to disclosure (either in Section 73.3613 or in a new rule section relevant only to international broadcast stations) or is the Commission's general authority to request relevant information during an investigation or to otherwise fulfill its statutory obligations sufficient?

15. We seek comment on these proposals. Is there a continuing need for these licensees and permittees to routinely file paper copies of Section 73.3613 documents with the Commission? What is the value, if any, of retaining the Section 73.3613 paper filing requirement for international broadcast stations for the Commission and the public? Would eliminating the requirement and retaining our ability to obtain Section 73.3613 documents upon request adequately ensure that the Commission will have access to information concerning ownership and control of international broadcast stations and compliance with our rules? Are there any reasons that would support a requirement that international broadcast stations make these documents available to members of the public? If so, what is the least costly and most effective manner of doing so? We note that these stations transmit programming that is intended to be received in foreign countries and are not required to have public inspection files, and thus do not currently make Section 73.3613 documents available to the U.S. public in that manner. And, considering the very small number of stations operating nationally, Section 73.3613 documents of international broadcast stations may be of little relevance to the U.S. public. We seek comment on these issues.

16. Time Brokerage Agreements and Joint Sales Agreements. A time brokerage agreement (TBA), also referred to as local marketing agreement (LMA), involves the sale by a

licensee of discrete blocks of time to a broker that supplies the programming to fill that time and sells the commercial spot announcements in it. A joint sales agreement (JSA) is an agreement that authorizes a broker to sell some or all of the advertising time on the brokered station. Pursuant to Section 73.3613(d), attributable TBAs and attributable JSAs must be filed with the Commission by the brokering station. In addition, our existing public file rule for commercial stations requires that all TBAs and JSAs involving commercial stations, regardless of their attribution status, also be placed in the public inspection file for all participating stations; that is, under the current rules commercial broadcast stations cannot elect merely to list these agreements in their public files. Because Section 73.3613(d) duplicates an existing public file requirement for a limited subset of TBAs and JSAs, we tentatively conclude that we may eliminate this requirement as it applies to commercial stations. We believe that elimination is appropriate, regardless of the disclosure requirement that may ultimately be selected. Under the current rule, attributable TBAs and attributable JSAs—like all other Section 73.3613 documents—must be filed with the Commission within 30 days of execution. However, our existing public file rules do not explicitly state how quickly licensees and permittees must add these documents to their public file. As noted above, however, we are seeking comment on whether to adopt a specific timeframe for updating Section 73.3613 documents. We seek comment on this issue.

17. Unlike commercial stations, noncommercial stations are not currently required to maintain copies of all TBAs or JSAs in their public inspection files; rather, under our public file rules, these stations have the option of only maintaining a list of all Section 73.3613 documents, including certain TBAs and JSAs, and must provide a copy of these documents to requesting parties. When the Commission adopted the public file rules requiring that all TBAs and/or JSAs

involving commercial stations be placed in the public inspection file, it did not discuss a similar requirement for noncommercial stations. Given the nature of and rules applicable to the noncommercial service, it is likely that TBAs and JSAs involving noncommercial stations are not as prevalent as those involving commercial stations. Accordingly, no change to Section 73.3613(d) is necessary with respect to noncommercial stations, which are already required to list these agreements in their public files and make them available upon request. We seek comment on this issue.

18. Redaction of Confidential or Proprietary Information. Section 73.3613 explicitly allows the redaction of confidential or proprietary information for attributable TBAs and JSAs, provided that unredacted versions of the agreements shall be provided to the Commission upon request. A similar rule applies to TBAs and JSAs required to be placed in the public inspection file. Section 73.3613 does not currently provide for redaction of other agreements filed pursuant to the provision. However, the Commission's general rules provide a procedure for seeking such redactions, and other agreements filed pursuant to this section that contain confidential or proprietary information are routinely submitted to the Commission in both redacted and unredacted forms along with a request for confidential treatment. We have no evidence that this practice—both the specific provisions allowing the redaction of TBAs and JSAs and the routine submission of redacted and unredacted versions of other 73.3613 documents pursuant to Section 0.459 of the Commission's rules—has impaired the ability of the Commission or other interested parties to evaluate these agreements. Accordingly, we tentatively conclude that Section 73.3613's specific provision allowing the redaction of TBAs and JSAs, including the requirement that unredacted copies shall be made available to the Commission upon request, should apply to all Section 73.3613 documents to the extent that they contain confidential or

proprietary information. Under our proposal herein, redaction would only be necessary when a document is posted to the online public file or provided to the Commission or the public upon request. We seek comment on this tentative conclusion.

PROCEDURAL MATTERS

19. Initial Paperwork Reduction Act Analysis. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

20. Ex Parte Rules. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other

filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

21. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

22. Availability of Documents. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

23. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

24. Additional Information. For additional information on this proceeding, contact Christopher Clark of the Industry Analysis Division, Media Bureau, at (202) 418-2609.

Initial Regulatory Flexibility Act Analysis

25. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) the Commission has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) of the possible

significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

26. Need for, and Objectives of, the Proposed Rules. In this NPRM, the Commission seeks comment on how to modernize Section 73.3613 of the Commission's rules, which requires each licensee or permittee of a commercial and noncommercial AM, FM, television, or international broadcast station to file certain contracts and other documents with the Commission within 30 days after execution. The types of documents that must be filed with the Commission under the current rule include network affiliation agreements between a television station and a national network; documents that relate to ownership or control of the licensee or permittee; contracts that relate to management of a station by someone other than a regular employee, officer, or director of the station, or by any person where the contract also provides for both a percentage of profits and sharing in losses; attributable time brokerage agreements; and attributable joint sales agreements. In addition, the current rule also requires that the following documents be kept at the station and made available for inspection upon request by the Commission: subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the television vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for four or more hours per day, except where the length of the events broadcast is not under control of the station; and contracts with chief operators. The potential rule changes discussed in the NPRM stem from a Public Notice issued by the Commission in May 2017

launching an initiative to modernize the Commission's media regulations. Several commenters in the proceeding have argued that the Commission should amend Section 73.3613 to eliminate the paper filing requirement and other duplicate or unnecessary filing requirements.

27. The NPRM proposes to eliminate the Section 73.3613 paper filing requirement for licensees and permittees of commercial and noncommercial AM, FM, television, and international broadcast stations. In addition, the NPRM also seeks comment on other proposed modifications to broadcasters' current obligations under Section 73.3613, including, among other things, eliminating certain redundant filing obligations and providing enhanced confidentiality protections. The rule revisions on which the NPRM seeks comment are intended to reduce unnecessary regulation and regulatory burdens that can impede competition and innovation in the media marketplace.

28. Legal Basis. The proposed action is authorized pursuant to Sections 1, 4(i), 4(j), 303(r), 309, 310, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 309, 310, and 336.

29. Description and Estimates of the Number of Small Entities to Which the Proposed Rules Will Apply. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Application of the statutory criteria of dominance in its field of

operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

30. The rules proposed herein will directly affect small radio, television, and international broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

31. Radio Stations. This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$24,999,999 and \$50 million, and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

32. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database on January 8, 2018, about 11,372 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial AM radio stations to be 4,639 stations and the number of commercial FM radio stations to be 6,744, for a total number of 11,383. We note the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,120. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE

stations that would permit it to determine how many such stations would qualify as small entities.

33. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both. The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a "small business," an entity may not be dominant in its field of operation. We further note that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis; thus, our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and the estimates of small businesses to which they apply may be over-inclusive to this extent.

34. Television Broadcasting. This Economic Census category comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from

an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$24,999,999 and \$50 million, and 70 had annual receipts of \$50 million or more. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

35. The Commission has estimated the number of licensed commercial television stations to be 1,377. Of this total, 1,257 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on January 8, 2018, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 390. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

36. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Business concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or

quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

37. International Broadcast Stations. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to International Broadcast Stations. The closest applicable SBA size standards and U.S. Census Bureau category is Radio Stations. Establishments in this industry are primarily engaged in broadcasting aural programs by radio to the public with programming that may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this category is firms having \$38.5 million or less in annual receipts. U.S. Census Bureau data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$24,999,999 and \$50 million, and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA’s size standard the majority of entities in this industry are small entities.

38. According to the Commission’s records there were 16 international broadcast stations operating as of December 13, 2017. The Commission however does not request nor collect annual revenue information; therefore, the Commission is unable to estimate the number

of international broadcast stations that would constitute a small business under the SBA definition.

39. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. In this section, we identify the reporting, recordkeeping, and other compliance requirements proposed in the NPRM and consider whether small entities are affected disproportionately by any such requirements.

40. Reporting Requirements. The NPRM seeks comment on how quickly licensees and permittees must update the Section 73.3613 documents in their public file or update the list of such documents. Presently, licensees and permittees are expected to update their files in a timely fashion and to maintain orderly files. The NPRM seeks comment on whether to retain the existing practice for public file updates or to adopt a specific timeframe for updating the Section 73.3613 documents in the station's public file (e.g., continue to require updates within 30 days after execution, consistent with the current practice under Section 73.3613).

41. Recordkeeping Requirements. The existing public file rules currently give stations the option of either (i) retaining copies of the documents listed in their ownership reports in the public file or (ii) maintaining an up-to-date list of such documents in the public file and providing copies to a requesting party within seven days. To preserve the current level of access to these documents, the NPRM proposes to clarify that a station must maintain an up-to-date inventory of its Section 73.3613 documents in its public file, regardless of whether the station chooses to retain copies or a list of documents in the public file, and provide copies of its Section 73.3613 documents to the Commission and the public within seven days upon request.

42. Other Compliance Requirements. Section 73.3613 explicitly allows the redaction of confidential or proprietary information for attributable TBAs and JSAs, provided that

unredacted versions of the agreements shall be provided to the Commission upon request. The rule does not currently provide for redaction of other agreements filed pursuant to the provision. The NPRM tentatively concludes that Section 73.3613's specific provision allowing the redaction of TBAs and JSAs, including the requirement that unredacted copies shall be made available to the Commission upon request, should apply to all Section 73.3613 documents to the extent that they contain confidential or proprietary information. Under this proposal, redaction would only be necessary when a document is posted to the online public file or provided to the Commission or the public upon request.

43. The proposed revisions to Section 73.3613 will relieve affected broadcast stations, including smaller stations, of the obligation to file certain information with the Commission. And although there were not any comments filed providing specific information quantifying the costs and administrative burdens of complying with the existing Section 73.3613 filing requirements, and we cannot precisely estimate the impact on small entities of eliminating those requirements, no party in the Media Modernization proceeding, including smaller entities, has opposed the proposals discussed in the NPRM. We therefore find it reasonable to conclude that the benefits of adopting the proposals discussed therein would outweigh any costs.

44. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance,

rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

45. The NPRM proposes to amend Section 73.3613 to eliminate the paper filing requirement for Section 73.3613 documents, and seeks comment on other proposed modifications to broadcasters' current obligations under Section 73.3613, including, among other things, eliminating certain redundant filing obligations and providing enhanced confidentiality protections. Under the proposal in the NPRM, redaction of confidential or proprietary information would only be necessary when a document is posted to the online public file or provided to the Commission or the public upon request. The rule changes proposed in the NPRM, if adopted, would relieve broadcast licensees and permittees, including small entities, of the time and expense associated with filing paper copies of Section 73.3613 documents with the Commission.

46. For licensees and permittees of commercial and noncommercial AM, FM, and television stations, the NPRM proposes to rely instead on the Commission's existing public file rules, which already require that these licensees and permittees make copies of Section 73.3613 documents available to the public. The existing public file rules provide these licensees and permittees with flexibility to select the disclosure method that is less burdensome with respect to Section 73.3613 documents, while still ensuring timely access to the documents by the public and the Commission. For international broadcast stations, the NPRM proposes that the Commission retain its ability to obtain Section 73.3613 documents from licensees and permittees of these stations upon request, as needed.

47. We anticipate that affected small entities will only benefit from the revisions proposed in the NPRM. However, in an effort to better understand the impact and identify

alternative actions that can be taken to minimize any significant economic impact on small entities, the Commission has invited comment on modifications or conforming changes to Section 73.3613, or any other Commission rule, that are necessary or appropriate to implement the proposals discussed in the NPRM and on any alternative proposals for making these documents available in a less costly and more effective manner. The Commission will review and analyze any information received in promulgating any final rules in this proceeding.

48. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule. None.

49. Ordering Clauses. Accordingly, it is ordered that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 309, 310, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 309, 310, and 336, this Notice of Proposed Rulemaking is adopted.

50. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

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